recollection matters which had taken place before him some months previously. It is contended that the party appealing from a county court must, where no note is forthcoming, obtain a certificate from the county court judge that he has no note; that nothing else will do.

After citing Order LIX Rule 8 of the Rules of the Supreme Court 1883 he went on :—

> The rule contemplates that the appeal may proceed in the absence of a note by the county court judge; it is for the Court in each case to say whether it is satisfied that it cannot get the best evidence of what took place namely the judge's note. In the present case I am satisfied that there is no note. The county court judge in his certificate, as it is called, says that the newspaper reports are fairly accurate, though somewhat condensed. In these circumstances we have allowed a report in a local newspaper to be used as to what took place before the learned judge. We have therefore no note of the county court judge, but we are satisfied that we have before us in the circumstances the best materials we can obtain for ascertaining what took place before him, and we proceed to act upon them.

In *Higginson v. Blackwell Colliery Company*[4] the county court judge gave an oral judgment and later, on appeal, a written one which Buckley L. J. seems to have thought "something else". This view does not seem to have been shared by the other Lord Justices. Lush J. in the Divisional Court questioned the judge's right to give two judgments to which objection Phillimore L. J. dissented saying there was but one judgment though, may be, two reasons.

In *Cross and others v. Gray, Dawes and Company*[5] the Court of Appeal was prepared to act on a shorthand writer's note verified by affidavits in lieu of the judge's notes. These cases show on what evidence a court of appeal might act, and that evidence may be compared with what is available here.

It is true that in this country a High Court Judge may under Section 25 of the Courts Enactment give a certificate of the grounds of his judgment after it is given and the interval might extend to the time limited in section 18 to wit one month. That is not a long period as compared with those in *Abraham v. Dimmock* of seven weeks, and five and half months, or that in this case of three and half years. That section however did not apply to the courts sitting under the Japanese, and can hardly now apply to Mr. Ismail Khan personally.

Mr. Ismail Khan certainly holds no office and could do no act, which purported to be done by virtue of such. There is no question now of his signing any decree or judgment, but of evidence of the judgment given on 12.1.44, of the facts found therein, of the arguments considered and of the law applied. I do not think it necessary to decide whether he could provide evidence by what might appear to be a judgment or an official act. In his reply to Mr. Ong, Mr. Ismail Khan prefaced his note with the words — "I do not know if it would be proper for me to write a judgment now". This, in any case, is the gist of the matter. The cases cited may not be direct authorities, but they illustrate the difficulties which would beset appeal. It is not here a case of Mr. Ismail Khan writing "some months afterwards" but of some years. In *Abraham v. Dimmock* it will be seen the court preferred a newspaper report. I think the answer to Mr. Ismail Khan's enquiry is in the negative. It is noteworthy that none of the parties, nor even Mr. Ong, who was personally present, professes any clear recollection of the judgment given. And it is abundantly clear that there is no chance of counsel agreeing it. These seem to me considerations which lead to the conclusion that setting aside is the appropriate remedy in this case. On this point the 11th defendant's case cannot be distinguished from that of the other ten. The Japanese decree of 12.1.44 is therefore set aside. Costs to be costs in the cause.

Judgment Set Aside.

KOH AH CHUA AND OTHERS v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Anysley, C.J. Singapore, Spenser-Wilkinson and Brown, JJ.) October 29, 1947]

Evidence Enactment, Section 30 — Proved confession affecting person making it and other jointly under trial for same offence.

Although the Court may take into consideration the confession of a co-accused duly made before a Magistrate and proved at the trial, its weight is slight. Not being made on oath or subject to cross-examination, it is of even less weight than the evidence of an accomplice. A person making such a confession usually attributes the chief blame to others. Such evidence is not ordinarily sufficient without corroboration.

COURT OF CRIMINAL APPEAL.

The judgment of the Court of Appeal was delivered by :—

Murray-Aynsley, C. J. : — In this case the first three appellants were charged :—

> That you on the 12th day of February, 1947, at 3¾ milestone on the Muar, Tangkek Road, in the State of Johore, robbed one Chua Yok Hua of $6,000/- cash and that you thereby committed an offence punishable under section 392 of the Penal Code.

The fourth appellant was charged :—

> "That Koh Ah Chua, Tan Ban Chey and Goh Kim on the day and at the place above-mentioned robbed one Chua Yok Hua of $6,000/- cash, an offence punishable under section 392 of the Penal Code and that you Tan Peng Hong abetted the said Koh Ah

Chua, Tan Ban Chey and Goh Kim in the commission of the said offence of robbery which was committed in consequence of your abetment and that you have thereby committed an offence punishable under sections 109 and 392 of the Penal Code."

In the case of the first three appellants there was nothing to be said as to conviction or sentence except that the sentence of whipping was wrongly imposed. With this variation their appeals were dismissed.

In the case of the 4th appellant a serious question arose. The principal evidence against him consisted of a confession made by a co-accused to a Magistrate and duly proved at the trial. Apart from this the most that could be said was that some of the evidence tended to corroborate parts of the confession.

Section 30 of the Evidence Enactment, which alone makes it possible to consider such a confession, merely says that the Court may take into consideration such confession. No legislation can add to the value of such a confession as evidence. We consider that its value is less than that of the evidence of an accomplice because it was made in the absence of the appellant, was not made on oath nor subject to cross-examination, and usually in such cases the person making the confession attributes the chief blame to others.

In the circumstances we do not consider that the evidence against the 4th appellant was sufficient, and his appeal is allowed and conviction quashed.

Conviction Quashed.

KRISHNAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) Decembre 4, 1947]

Negligent driving — Right of other road users — gross negligence — What is — Penal Code, S. 304A.

Where the accused person is charged for causing death by the negligent driving of a lorry, the prosecution must prove that he was responsible for some act or omission while driving the lorry which showed such carelessness or lack of consideration to the rights of other road users that the only conclusion that can be come to is that the act or omission amounted to gross negligence on his part. It is essential to elicit the evidence to show the actual situation with which the driver was faced in relation to his speed and other factors of driving and whether he got into this situation through his own or another's carelessness or rashness. The fact of knocking down a pedestrian on the road is not ipso facto conclusive of gross negligence.

CRIMINAL APPEAL.

P. V. Charry for Appellant.

W. N. McCall for Respondent.

Laville, J. : — In this case accused was charged under Section 304A, Penal Code, with causing the death of a Tamil at 5.30 p.m. on 21.7.47 at Jalan Mahmoodiah, Johore Bahru, by doing a negligent act, i.e. driving lorry No. 594860 in a negligent manner, and sentenced on being found guilty to 6 months R.I.

The accused was unrepresented, and did not cross-examine any of the witnesses for the prosecution. The points to be proved by the prosecution in this charge is that accused in driving the lorry showed negligence in his handling of the lorry, i.e. he was responsible for some act or omission while driving the lorry which showed such carelessness or lack of consideration of the rights of other road users that the only conclusion that can be come to is that the act or omission amounted to gross negligence on his part.

The only evidence touching this given by the prosecution is that accused was travelling on the crown of the road coming down-hill, that on seeing an approaching car 30 ft. away he swerved to his left and knocked down the Tamil. There is no attempt on the part of the prosecution to ascertain from the eyewitness facts which are pertinent to the question of the accused's guilt or innocence; for instance, the distance between the lorry and the Tamil when the witness first saw them, the position of witness' car on the road, the speed of the lorry at the time, whether its brakes were in good order and could or ought to have been applied, and whether it was possible for a vehicle to avoid the on-coming car and at the same time pass between it and the Tamil. It is essential in cases of this nature to elicit evidence to show the actual situation with which the driver was faced in relation to his speed and other factors of driving and whether he got into this situation through his own or another's carelessness or rashness.

In my view there has not been a full and proper trial of the guilt or innocence of the accused, and the fact of knocking down a pedestrian on the road is not *ipso facto* conclusive of gross negligence. At the same time it cannot be doubted that the Tamil was knocked down by the lorry and that such a thing calls for enquiry as to what amount of negligence was displayed by the driver thereof.

For these reasons I set aside the conviction and sentence and order a retrial before another District Judge.

Conviction Set Aside — Re-Trial Ordered.